P & T Metals, Inc. *and* Sheet Metal Workers' International Association, Local Union No. 170, AFL–CIO. Case 21–CA–29783

April 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On August 31, 1994 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, P & T Metals, Inc., South El Monte, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In his answering brief, the General Counsel argued that the Respondent's exceptions were filed in an untimely fashion and therefore should be rejected. The General Counsel contended that the certificate of service attached to the exceptions indicated that they were mailed on the date that they were due to be received by the Board and were thus untimely under Sec. 102.111(b) of the Board's Rules and Regulations. We reject the General Counsel's argument because the exceptions were time stamped as received by the Board on the due date.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent seeks to have the record reopened to present new evidence ''to attest to the credibility of [its witnesses] Frazier and Cabrera,'' and ''to present additional evidence to discredit the unbelievable testimony of [General Counsel's witness] Arrendondo.'' We reject these requests to reopen the record because the Respondent has failed to show how this evidence was newly discovered or previously unavailable. See Sec. 102.48(d)(1) of the Board's Rules and Regulations. Moreover, the request is denied also on the ground that it attempts to attack the judge's credibility resolutions. See *Hagar Management Corp.*, 313 NLRB 438 fn. 1 (1993).

[3] We agree with the judge that the Respondent violated Sec. 8(a)(5) of the Act by instituting a unilateral change in the vacation policy. We find it unnecessary to pass on the judge's additional 8(a)(3) finding that the Respondent instituted the change in the vacation policy in retaliation for the employees choosing the Union as their bargaining representative, since doing so does not affect the remedy and Order.

Neil A. Warheit, Esq., for the General Counsel.
Ted Rexius, President, of South El Monte, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Los Angeles, California, on June 30 and July 1, 1994. The charge was filed on November 30, 1993, by Sheet Metal Workers' International Association, Local Union 170, AFL–CIO (the Union).[1] The charge was amended on January 24, 1994. On March 8, 1994, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations by P & T Metals, Inc. (the Respondent), of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing briefs have been received from counsel for the General Counsel and from the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a California corporation with an office and place of business located in South El Monte, California, where it is engaged in the recycling and sale of scrap metal. In the course and conduct of its business operations, the Respondent annually sells and ships goods and materials valued in excess of $50,000 to enterprises located within the State of California, each of which enterprises annually sell and ship goods and materials valued in excess of $50,000 directly to customers located outside the State of California. It is admitted, and I find, that at all times material, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

[1] The Respondent maintains that it has not been properly served with the charge, as the Union, rather than the Regional Director, is required to serve it upon the Respondent. The Respondent's understanding is erroneous. Sec. 102.14 of the Board's Rules and Regulations provides that while the charging party shall be responsible for the timely and proper service of a copy of the charge, the Regional Director will, as a matter of course, serve the charge upon the charged party. In the instant case the charge was timely served upon the Respondent by the Regional Director. As service has thus been perfected, the Union need not serve the Respondent a second time.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues in this proceeding are whether the Respondent has violated Section 8(a)(1), (3), and (5) of the Act by failing and refusing to negotiate with the Union upon request, and by making unilateral changes in various terms and conditions of its employees' employment without bargaining about such changes with the Union.

B. *The Facts*

The Union filed a representation petition on June 7, 1993.[2] Following a Board-conducted representation election in Case 21–RC–19229 on July 27, the Union was certified as the collective-bargaining representative of the Respondent's employees on August 4.

Jose Bresino has worked for the Respondent for 5 years. Bresino testified that about 3 weeks prior to the election the Respondent held a meeting with the employees. The meeting was conducted by Payroll Manager Kathy Munro, daughter of the Respondent's president, Ted Rexius. The plant manager, Melicio Pulido, and his brother, the assistant plant manager, Arnulfo Pulido, were also present. Arnulfo Pulido acted as interpreter and translator for Munro, as she does not speak Spanish and apparently all of the Respondent's plant employees are Spanish-speaking.

Bresino testified that Munro stated during the meeting that the Respondent was in a bad financial condition and that the Company was going to have problems if the employees selected the Union. She said that her father had health problems, and that if anything happened to him she would be taking over the running of the Company and the employees would have to deal with her; and, further, that they would have problems with her. She advised them that they could take this as a warning, as advice, or as a threat.

Prior to the election, according to Briseno, the employees were able to earn extra money by performing wire-stripping work at home. They would purchase insulated copper wire from the Respondent, strip the insulation from the wire at home, and resell the stripped copper wire to the Respondent. According to Briseno, the employees could earn approximately $30 to $40 per week performing such work when wire was available. A week or two after the election, however, Manager Melicio Pulido told all of the employees that they could no longer purchase wire from the Respondent. The employees asked why this change was being made, and Pulido, without specifically mentioning the Union, replied that the employees knew why.

After this change in policy, however, the managers, Arnulfo and Melicio Pulido, did continue to strip wire at home, as did one unit employee, Manuel Pena, who voted in the election.

Briseno testified that prior to the election employees were permitted to receive ''important'' phone calls at work. After the election, however, the employees were told that they could not receive or make phone calls except in emergencies. However, Briseno acknowledged that he was receiving too many unwanted phone calls at work. After the election Munro spoke with him about abusing the phone privileges, and an accommodation was reached whereby Briseno could receive certain daily phone calls from his wife in order to schedule transportation home from work.

Prior to the election the regular hours of work for most of the employees were from 8 a.m. until 5 p.m. In addition to a half-hour lunch period, they received two 15-minute breaks per day, one in the morning and one in the afternoon. They did not have to punch out for the breaks, and were paid for 8-1/2 hours of work per day, including one-half hour of overtime. Briseno testified that beginning in October, the employees were required to punch the timeclock prior to taking their breaks, and thereafter were paid for only 8 hours of work per day. This was announced to the employees by Manager Melicio Pulido who had earlier told the men that, according to Rexius, they were making Rexius' life impossible and that Rexius could also do the same thing to the men. Further, Pulido said that according to Munro, the men had wanted a union and now they were going to have to suffer. At the time of the hearing, the men were continuing to have to punch out for breaks.

Briseno also testified that in October, and frequently thereafter whenever the employees brought up matters of concern, Manager Melicio Pulido told them that Munro had said that since the employees wanted a union they would now have to suffer.

Prior to the election the employees could receive a double paycheck if they worked rather than took their vacation. Briseno testified that about 4 months after the election, Manager Melicio Pulido informed the employees that they could no longer work during their vacation week but would have to take their vacation and thus receive only one check. However, it appears that an exception was made for Briseno who was allowed to work and to also receive his vacation check, as he was needed at the time.

Briseno testified that prior to the election the employees were permitted to begin putting things away, washing up, and changing clothes at about 4:45 p.m., and would not have to punch out until 5 p.m. About 2 months after the election, the employees were advised that they could not begin washing up until 5 p.m., after they had punched out. This policy remains in effect.

Juan Arrendondo has worked for the Respondent more than 4 years. During the aforementioned preelection meeting, which took place in Manager Malecio Pulido's office, all of the employees were present. Munro told the employees that the Company had no money, and that the employees were not going to get any additional benefits as a result of the Union. She said that she did not believe that they wanted a union, and asked each of them to prepare a paper for her and indicate on it whether they wanted a union or not. She said that her father had a heart condition, and that if anything happened to him ''because of this'' the employees were going to have to face her, and that they could take this as a threat or any way that they wanted.

About 2 or 3 weeks after the election, Assistant Manager Arnulfo Pulido said that Munro instructed him to tell the employees that if they wanted a union they would have to suffer. Arrendondo testified that he understood her to mean that they would suffer many changes because of the Union.

Arrendondo testified that prior to the election, employees were allowed to use the telephone to make and receive phone calls at work at any time during the day. About 2 to 3 weeks

[2] All dates or time periods hereinafter are within 1993 unless otherwise specified.

after the election, this policy was changed. Assistant Manager Arnulfo Pulido told the group of employees that Munro told him to tell them that they were not going to be able to use the telephone any more, and were only to receive calls in case of emergency. He said there were going to be a lot of changes to the rules. Arrendondo acknowledged that the employees were told that they were abusing the telephone privileges.

Prior to the election, according to Arrendondo, employees were able to earn extra money by buying wire from the Company, stripping it at home, and selling it back to the Company. About a month after the election, Assistant Manager Arnulfo Pulido told Arrendondo that Rexius said he did not want him to do this wire stripping work any more. Thereafter, only the managers were permitted to do wire stripping. Thus, since about August, Arrendondo, who testified that prior to the advent of the Union he had purchased 100 to 150 pounds of wire every week and would earn between $40 to $50 per week stripping the wire, has not been able to earn extra money in this way.

According to Arrendondo, at about the end of October, Assistant Manager Arnulfo Pulido told all the employees that Rexius was no longer going to pay them for their 15-minute morning and afternoon breaks, and that the employees would have to punch out during the breaks and punch in when they returned. Pulido told the employees that Rexius said that the change was being made because the employees wanted the Union. After this, the employees began punching out for their breaks, and were paid for 8 hours per day, rather than for 8 straight time hours and one-half hour of overtime. They are still punching out for breaks at the present time.

Arrendondo also testified similarly to Briseno regarding the changing of the vacation pay policy about 2 months after the election. Thus, the employees were no longer permitted to work during their vacations and receive a double paycheck.

Arrendondo testified that prior to the election, the employees were permitted to begin washing up before 5 p.m. Thus, at 4:45 p.m., they took about 5 minutes to put everything away, and an additional 10 minutes to change their clothes and wash their hands. This practice was discontinued about 2 months after the election when the employees were told by Assistant Manager Arnulfo Pulido that Rexius did not want them to wash their hands and change their clothes before 5 p.m. Currently, they are required to wash up and change clothes off the clock after 5 p.m.

John Torres was formerly business manager and financial secretary of the Union. On September 29, after the certification, he sent the Respondent a letter requesting the commencement of negotiations and included an initial contract proposal. However, the Respondent allegedly did not receive the letter or proposed contract until October 8. Thus, by letter dated October 9, Rexius maintains that he did not receive Torres' letter until October 8, and further states:

> I would appreciate it if you could give me some dates that you would be available to start negotiations around the first of November. I will respond to you, as soon as possible, after I receive your reply.

Ted Rexius is the owner of another company, Industrial Aluminum. At about the same time as the certification herein, the Union was also certified to represent the employees of that entity. During negotiations with Industrial Aluminum on October 15, Torres presented Rexius with a letter regarding negotiations with the Respondent. Rexius signed the letter in Torres' presence. The letter from Torres, dated October 15, states:

> In response to your letter of October 9, and inasmuch as we are meeting today, I am hand delivering this letter, with available dates on which to meet of November 8, 10, and 11, 1993.

There is a space at the bottom of the letter with the word ''Received'' in typewriting. Rexius' signature appears thereafter.

At the end of the bargaining session on that date, Torres sought to get Rexius to agree to a future bargaining date for Industrial Aluminum, and an initial bargaining date for the Respondent. Torres told Rexius that he would be willing to negotiate both contracts on the same date. Rexius refused, saying that he wanted to negotiate each of the contracts separately. Further, Rexius said he could not agree to any of the proposed bargaining dates contained in the letter because he did not have his calendar with him, but that he would phone Torres the following Monday or Tuesday and give him proposed dates when he would be available to meet. However, according to Torres, Rexius never contacted him with any proposed meeting dates, and there has been no bargaining.

Torres testified that the Respondent never notified the Union of any changes it instituted after the election as testified to above by employees Briseno and Arrendondo, nor did it give the Union an opportunity to bargain about such changes.

Robert Sanchez, an organizer for the Union, corroborated Torres' testimony. Sanchez testified that he was present at the negotiating session on October 15. He saw Torres hand Rexius the aforementioned letter, and he saw Rexius sign the letter.

Payroll Manager Kathleen Munro, Ted Rexius' daughter, is in charge of payroll, insurance, and personnel. Munro testified that she conducted an employee meeting about 3 weeks prior to the election. During the meeting she asked what the employees wanted and what they had been promised by the Union. She explained that the benefits they wanted were expensive and that because of the Respondent's financial circumstances, the employees, with or without a union ''couldn't get anything additional, period,'' and that a union would not do them any good. She told the employees that her father had recently had a stroke, and that she thought some of the employees' actions and demands could adversely affect his health. She added that if anything happened to her father she would be running the place, and that if this occurred she would not be as lenient as her father and would have to delete some of the employees' benefits because of the Respondent's financial circumstances, regardless of the Union.

Munro testified that prior to the election, employees could not just indiscriminately receive and make phone calls at any time during the workday. Personal phone calls were only permitted during breaks, except for emergencies. However, either before or after the election, some of the employees, including clerical employees, started abusing the privilege by

making and receiving phone calls at any time. This caused a problem, and after the election it was announced that the formal phone policy was to be enforced. Thus, according to Munro, the policy was not changed, it was enforced; currently the employees are permitted to receive and make phone calls during breaks or emergencies.

Munro explained that her comments, related by the managers to the employees, about the employees having to ''suffer'' because of the Union, came directly from a phone call with some unidentified individual in the Board's Regional Office. Thus, according to Munro, a few employees told her after the election that they had made a mistake and asked her how to get out of the Union. She phoned the Board's Regional Office on their behalf and the person she spoke with said that there was nothing the employees could do, that ''basically they had to suffer with [the Union] for a year,'' and at the end of a year they could vote again. She related this to the employees through her manager and gave them the phone number of the Regional Office.

Manager Melicio Pulido did not testify in this proceeding. Assistant Manager Arnulfo Pulido testified that employees were permitted to use the phone if it was very important or an emergency. He denied telling the employees that any changes that were being made in retaliation for voting for the Union. He has never had a meeting with employees to talk to them about changes in the washup policy, or vacations, or punching in and out for breaks, but there was a meeting about the wire stripping policy. He told the employees that his boss decided not to sell wire to the employees. He did not explain why, because he did not know why; he simply related to them what Rexius told him to tell them.

The Respondent's owner, Ted Rexius, testified that none of the postelection changes in the prior policies were instituted in retaliation for the employees' having selected the Union as their bargaining representative. Employees were no longer permitted to perform wire stripping at home because they had been abusing the privilege by using worktime to sort and store the wire, and by not taking the wire home on the weekends. Rather they would leave large quantities of it in the warehouse, and Rexius, apparently, was unable to sell it or strip it because the employees had set it aside for themselves. Thus, he decided to discontinue the practice of permitting employees to make extra money at home by stripping wire. However, after the practice was discontinued, his two managers have been permitted to continue to make extra money by stripping wire at home, as has one unit employee; each of these individuals apparently approached Rexius and asked to be permitted to continue the practice. Rexius testified that he has no problem with employees stripping wire at home if they abide by the rules and it does not cause him any monetary harm.

Rexius testified that the change in the vacation policy was instituted because the Union had requested that employees be required to take a vacation. Thus, this proposal was included in the proposed contract which the Union had submitted to him along with the request to commence bargaining negotiations.[3] After instituting the policy, Rexius received numerous complaints, and upon being advised by the employees that they wanted to be able to receive a double paycheck for working during their vacations, he reverted to the former policy.

Regarding the requirement that employees clock out during their 15-minute morning and afternoon break periods, Rexius testified that this was instituted in order to equalize the employees' hours and save the Company money. Thus, some employees were working an hour less that other employees, and Rexius considered this to be unfair. In order to equalize the hours of work for all employees, Rexius decided to permit all the employees to work the same number of hours per day, but in order to be able to afford this he required them to clock out for their breaks, thus saving the Respondent one-half hour of overtime pay per employee per day. The change was not instituted in order to retaliate against the employees for selecting the Union.

Rexius testified that the washup period has never changed. Apparently, according to Rexius, employees had been required to work until 5 p.m. and could wash up and change clothes after working hours. Further, the telephone policy has never changed, it has simply been enforced after being abused by two or three employees. Again, this decision to enforce the preexisting telephone policy was not motivated by antiunion considerations.

Rexius testified that bargaining negotiations have never taken place with the Union because he has been waiting for the Union to contact him regarding such negotiations. He denied that Union Representative Torres ever gave him the aforementioned October 15 letter requesting bargaining, or that he ever signed such a letter, although he agreed that his signature appeared to be at the bottom of the letter opposite the acknowledgment that he received the letter.[4]

Two employees of Industrial Aluminum, Betty Frazier and Ernie Cabrerra, testified that they were present during the October 15 bargaining session and did not recall Torres handing Rexius any document or Rexius signing any document. Nor have they ever seen the letter that Rexius purportedly signed at that meeting.

Analysis and Conclusions

The Union was certified as the collective-bargaining representative of the Respondent's employees on August 4. On October 9, after receiving a letter from the Union requesting bargaining, the Respondent's president, Ted Rexius, wrote to the Union and stated that he would be available to commence collective-bargaining negotiations around the first of November. Further, he requested that the Union provide him with proposed meeting dates, and said that he would reply to the Union as soon as possible after receiving such proposed dates for meeting. I credit the testimony of Union Representative Torres, corroborated by Robert Sanchez, an organizer for the Union, and find that 6 days later, on October 15, at a negotiating session involving a different entity owned by Rexius, Torres handed Rexius a reply letter in which he proposed that bargaining take place on November 8, 10, and 11. Rexius indicated receipt of the letter by sign-

[3] Union Representative Torres testified in this regard that requiring mandatory vacations was his personal philosophy and such provisions were included in standard collective-bargaining agreements; thus, he assumed, incorrectly, that the Respondent's employees would be in favor of this provision.

[4] In his brief, however, Rexius maintains that the signature on the letter is not his signature.

ing it, and told Torres that he would get back to him after Rexius reviewed his appointment calendar. Thereafter, Rexius never contacted Torres as he said he would, and no bargaining has taken place.

I do not credit the testimony of Rexius who denied that he received or signed the letter or stated to Torres that he would get back to him about commencing negotiations. The fact that his corroborating witnesses, Betty Frazier and Ernie Cabrerra, who were present during the October 15 meeting, may not have seen Torres present the letter to him and may not have heard his discussions with Torres regarding the commencement of bargaining negotiations, is not sufficient to overcome the credible testimony of Torres and Sanchez. Indeed, Frazier and Cabrerra were concerned with negotiations pertaining to another entity, and were not involved with the Respondent's operations. Further, Rexius stated at the hearing that the letter in question did indeed appear to contain his signature.

It is admitted that the Respondent made certain unilateral changes in significant terms and conditions of its employees' employment without prior notification to or bargaining with the Union. Thus, as set forth above, it changed the wire-stripping policy, the vacation policy, and the break policy, all to the economic detriment of its employees. Collectively, this change in the aforementioned policies translated into a significant loss of remuneration for the affected employees.

Regarding the Respondent's contention that it changed the vacation policy in deference to the Union's contract proposal that employees be required to take a vacation, I do not, under the circumstances, find this to be a candid statement of the Respondent's motivation. Clearly, it sought to circumvent the Union in all other respects, and at no time did the Union convey to the Respondent that it had no objection to the instituting of any changes prior to bargaining. Rather, it appears that the Respondent was well aware of the employees' opposition to such a change in the vacation policy, and by selecting and instituting the vacation policy as set forth in the Union's initial contract proposal, was merely attempting to portray the Union in an unfavorable light rather than to engage in the bargaining process. If the Respondent was honestly attempting to give the employees what it believed they wanted, it would not have simultaneously taken away the benefits they had previously enjoyed.

I credit the testimony of employees Bresino and Arrendondo and find, contrary to the Respondent's contentions, that it did change the past practice of permitting employees to make or receive telephone calls at any time provided that the employees did not abuse this privilege. The fact that several employees may have abused the privilege does not, under the circumstances, permit the Respondent to unilaterally make changes that affect the remainder of the employees. Further, I find that, as credibly testified to by the employees, the Respondent changed its past practice of permitting the employees to change clothes and wash up prior to clocking out at the end of the day. Such unilateral changes in the past terms and conditions of employees' employment have adversely affected the employees.

While the Respondent maintains that whatever changes it instituted since the advent of the Union were not motivated by unlawful considerations or designed to retaliate against the employees for selecting the Union as their bargaining representative, the credible testimony of employees Briseno and Arrendondo indicates the contrary. Thus, these employees credibly testified that their managers repeatedly told them that, according to Payroll Manager Munro, they were going to have to suffer for bringing the Union in,[5] and that they were directly and indirectly told that the reason for certain of the various changes was because they were making Rexius' life miserable and because they had selected the Union. Although it appears that not each of the changes was accompanied by a direct statement to the effect that the change was being instituted in retaliation for the employees' selection of the Union, it is clear that no other rationale was given for the changes. Thus, under the circumstances, the employees were reasonably led to believe that each of the changes was unlawfully motivated in retaliation for their union activity, rather than, as the Respondent maintained at the hearing, because of economic considerations, or because the employees were allegedly abusing various privileges, or for other nondiscriminatory reasons.

On the basis of the foregoing, I find that the Respondent has violated Section 8(a)(5) of the Act by failing and refusing to engage in timely bargaining. Thus, it failed to contact the Union, as promised, in order to arrange the commencement of collective-bargaining negotiations, while at the same time commencing to institute unilateral charges in derogation of its bargaining obligation. Further, I find that the Respondent has violated Section 8(a)(5) of the Act by instituting unilateral changes in various terms and conditions of employment without prior notification to and bargaining with the Union. *Treanor Moving & Storage Co*., 311 NLRB 371, 385 (1993); *Santa Rosa Blueprint Service*, 288 NLRB 762, 764 (1988); *Storall Mfg. Co*., 275 NLRB 220, 238 (1985); *Webel Feed Mills & Transit Co.*, 217 NLRB 815, 820 (1975); *Advertiser's Mfg. Co*., 280 NLRB 1185, 1190–1191 (1986).

I further find that, as alleged, for the reasons stated above, that the Respondent has instituted the unilateral changes in the employees' terms and conditions of employment, as set forth above and found herein, in retaliation for their having selected the Union as their collective-bargaining representative. Such conduct is violative of Section 8(a)(3) and (1) of the Act. *Treanor Moving & Storage*, supra; *Studio S. J. T. Ltd*., 277 NLRB 1189, 1199 (1985). Also, I find that the Respondent has violated Section 8(a)(1) of the Act, as alleged, by telling its employees that they would have to suffer because they brought the Union in.[6] See *Portsmouth Lumber Treating, Inc*., 248 NLRB 1170, 1175 (1980); *Treanor Moving & Storage*, supra at 373.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1), (3), and (5) of the Act as alleged in the complaint.

[5] In this regard, the managers did not relate the alleged conversation, supra, between Munro and the Board agent. Rather, they simply told the employees what Munro told them, namely, that the employees would have to suffer because they brought the Union in.

[6] While the Respondent may have engaged in other violations of Sec. 8(a)(1) of the Act, specific allegations of such conduct are not alleged in the complaint.

4. The unfair labor practices found herein constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent unilaterally and discriminatorily instituted changes in its break policy, vacation policy, and wire-stripping policy, which changes resulted in a reduction in the wages or earnings of its employees, the Respondent shall be required to make its employees whole for any loss of earnings they may have suffered by virtue of the aforementioned changes. The backpay shall be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has failed and refused to bargain with the Union in a timely manner, it is recommended that the certification year be extended, and that it commence from the date the Respondent engages in collective bargaining with the Union.

It is further recommended that the Respondent post an appropriate notice, in Spanish and English, attached as ''Appendix.''

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, P & T Metals, Inc., South El Monte, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to negotiate with the Union as the collective-bargaining representative of its employees in violation of Section 8(a)(5) of the Act.

(b) Unilaterally changing the terms and conditions of employment of its employees in violation of Section 8(a)(5) of the Act.

(c) Discriminatorily changing the terms and conditions of employment of its employees in retaliation for their union activity in violation of Section 8(a)(3) of the Act.

(d) Telling its employees that they must suffer adverse consequences for bringing in the Union in violation of Section 8(a)(1) of the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reestablish the following policies or terms and conditions of employment as they existed prior to August 1993: the washup policy, the break policy, the vacation policy, the telephone policy, and the wire-stripping policy.

(b) Make whole its employees for the monetary loss of wages and earnings they suffered as a result of the changes in the Respondent's break policy, vacation policy, and wire stripping policy, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its South El Monte, California facility copies of the attached notice marked ''Appendix.''[8] Copies of notice, in both Spanish and English, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained by Respondent for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the certification year shall be extended and shall commence with the date the Respondent engages in collective-bargaining negotiations with the Union.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO as the collective-bargaining representative of employees in the following unit:

> All warehousemen and truck drivers employed by P & T Metals, Inc., at its facility located at 2213 North Tyler Avenue, South El Monte, California, excluding

all office clerical employees, janitors, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees without prior notification to and bargaining with the Union as the exclusive collective-bargaining representative of our employees in the unit described above.

WE WILL NOT change the terms and conditions of employment of our employees because they selected the Union as their collective-bargaining representative.

WE WILL NOT tell employees that they must suffer adverse changes in benefits because they selected the Union as their collective-bargaining representative.

WE WILL reestablish the following benefits and work policies as they existed prior to August 1993: the telephone policy, the washup policy, the break policy, the vacation policy, and the wire-stripping policy.

WE WILL make whole our employees for any loss of wages or earnings they suffered as a result of the discontinuation of the break policy, the vacation policy, and the wire-stripping policy.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

P & T METALS, INC.